IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

Civil Revision No.6769 of 2005

Date of Decision No.20.9.2007

Jai Ganesh and others

…Petitioners

Vs.

Town Improvement Trust and another

…Respondents

Present : Mr.S.K.Jain, Advocate for the petitioner.

Vinod K.Sharma, J.

This revision petition has been filed against the order dated 29.10.2005 passed by the learned Additional District Judge, Jind vide which the order dated 14.12.1993 passed by the learned Senior Sub Judge, Jind dismissing the application moved by the judgment-debtor in execution No.19 of 4.2.1989 was ordered to be set aside and the application moved by the respondent-judgment-debtor was allowed.

The land of the petitioner was acquired under Section 36 of the Improvement Trust Act by way of notification dated 3.11.1970. The award was passed by the Land Acquisition Collector on 3.5.1972 and the Land Acquisition Collector awarded 15 per cent solatium in addition to the price of the land acquired. The learned Tribunal Improvement Trust, Jind decided the reference under Section 18 of the Land Acquisition Act on 10.10.1988. The learned Tribunal granted solatium at the rate of 15% and interest at the rate of 6% per annum on the enhanced amount of compensation.

The petitioner-decree-holders filed a civil writ petition in this Court and the said writ petition was allowed and the petitioners were granted solatium at the rate of 30% and another amount of 12% by way of additional amount was granted from the date of notification under Section 36 of the Improvement Trust Act till the date of award of Collector. The High Court

also granted interest at the rate of 9% per annum from the date of dispossession for a period of one year and thereafter, 15% per annum till the date of payment. The petitioner filed execution application before the executing Court and during the pendency of the said execution, the respondent-Improvement Trust moved an application for dismissal of the execution petition on the ground that the same stood satisfied. This claim was raised on the plea that the decree-holders were not entitled to the benefits of Section 23(1-A) of the Land Acquisition Act as the award of the Land Acquisition Collector was passed on 3.5.1972, whereas, the amended Act was made applicable w.e.f. 30.4.1982. It was further claimed that the petitioner-decree- holders were not entitled to the benefits of Section 23(2) of the land Acquisition Act as well. The said application was dismissed by the learned executing Court and the executing Court was pleased to issue warrants of sale of the attached property of the judgment-debtors/respondents and process of proclamation of sale was also issued. The said order was challenged by the Improvement Trust by filing of Civil Revision No.1601 of 1993 which was disposed of by this Court on 31.8.1993. This Court stayed the auction of attached property, so as to enable the Improvement Trust to deposit the money in the executing Court. However, it was made clear that if the amount was not paid then the executing Court could proceed further in the matter.

It seems that the order dated 31.8.1993 passed by this Court was based on the compromise and resultantly, the application moved by the respondent-applicant for dismissal of the execution application having been satisfied, was dismissed by the learned executing Court on 14.12.1993, as Judgment-debtor failed to deposit the amount as ordered. The order dated 14.12.1993 was again challenged before this Court by way of Civil Revision No.932 of 1994. However, the said revision petition was disposed of being

not competent as it was held that the remedy available with the respondent-Improvement Trust was to file an appeal against the said order. In pursuance to the order dated 14.5.2005 passed by this Court in Civil Revision No932 of 1994, the respondent-judgment-debtor went in appeal before the learned Additional District Judge, Jind. The learned District Judge, Jind vide order dated 29.10.2005 was pleased to allow the appeal and hold that the order granting additional solatium and interest on additional amount under Section 23(1-A) of the Land Acquisition Act was in fact a nullity and therefore, the petitioners were not entitled to the amount claimed in the execution application. In order to reach this conclusion, the District Judge, Jind relied upon the judgment of Hon'ble Supreme Court in the case of **Urban Improvement Trust Jodhpur v. Gokul Narain and another, JT 1996 (4) S.C. 446**.

Learned counsel for the petitioners has challenged the said order primarily on the plea that the learned appellate Court has erred in law in allowing the application moved by the Improvement Trust by applying the law laid down in the case of **Urban Trust Jodhpur (supra)** by the Hon'ble Supreme Court. The contention of learned counsel for the petitioners is that the executing Court cannot go behind the decree and the jurisdiction of the executing Court to deal with the matter is limited only in case of decree is held to be nullity. Learned counsel for the petitioners further contended that in view of the decision of the Full Bench of this Court in the case of **Devinder Kaur vs. Ludhiana Improvement Trust, Ludhiana, 1975 PLR 257,** the impugned order cannot be sustained. He has made special reference to paras 3 to 5 of the said judgment which reads as under:-

> "3 The learned counsel for the Improvement Trust has invited our attention to the judgment of Supreme Court in Sarwan Singh etc. v. The State of Punjab

wherein para 10 of the Schedule to the improvement Act has been noticed as amending section 23 of the Acquisition Act and it has been observed that the said para provides some supplemental principles for determining the market value of the land according to the use to which the land is put on a material date. On the basis of the observations made in paras 3 to 6 of this judgment, it is submitted that section 59 of the Improvement Act and para 10 of the Schedule were held to be intra vires and, therefore, compensation can be determined under the mode provided by section 23 of the Acquisition Act as amended by para 10 of the Schedule. Thus, this decision appears to be directly in conflict with the previous decision of the Supreme Court in Nagpur Improvement Trust and another v. Vithal Rao and other (supra). In this situations, we have to follow the decision of the larger Bench, even if prior to time, as was ruled by the Supreme Court in Mattulai v. Radhe Lal. With very great respect to the learned judges who decided Sarwan Singh's case (supra), we cannot follow that decision on this point in preference to the decision in Nagpur Improvement Trust case (supra), which is by a larger Bench, though prior in time, which was not considered in Sarwan Singh's case.

4 Sarwan Singh's case (supra), however, also decided that the denial of the right of appeal available in the case of acquisition under the Acquisition Act does not make section 59 of the Improvement Act ultra vires Articles 14 of the Constitution. In view of the judgment, the attack on the vires of section 59 of the Improvement Act on the ground is no more available to the petitioners.

5. For the reasons given above, it is held-

(i) That the compensation to be awarded to the landowners those land is acquired for a Town Improvement Trust will not be less than the compensation determined for the land under the Land Acquisition Act and clause (2) and clauses

(a), (d) and (f) added a sub section (3) of section 23 of the Land Acquisition Act by clause 3 of para 10 of the Schedule to the Town Improvement Act which have the effect of reducing the amount of compensation to an amount less than the amount payable under Acquisition Act, are ultra vires Article 14 of the Constitution and are struck down, and

(ii) the non-provision of the right of appeal against the award made by the Tribunal under section 59 of the Improvement Act does not make the provisions of that section ultra vires Articles 14 of the Constitution on the ground that a right of appeal has been provided in the Acquisition Act against the award of the District Judge to the High Court."

The contention of the learned counsel for the petitioners therefore, is that this Court in Devinder Kaur's case (supra) has been pleased to interpret the judgment of the Hon'ble Supreme Court in case of **Nagpur Improvement Trust and another v. Vithal Rao and other (supra),** which is of the larger bench. Learned counsel for the petitioners also distinguished the judgment relied upon by the learned Appellate Court on the ground that in the case before the Hon'ble Supreme Court, the matter with regard to the acquisition had attained finality before coming into force of amending Act 1982.

The contention of the learned counsel for the petitioners, therefore, is that the learned District Judge had relied upon the judgment of the Supreme Court without looking into the facts of the case. In the said case, the proceedings had been finalized by the District Judge on 27.1.1998.

The Constitution Bench in the case of **Nagpur Improvement Trust and another v. Vithal Rao and other (supra)** has been pleased to

lay down that it is immaterial whether it is one Acquisition Act or another Acquisition Act under which the land is acquired. If the existence of two Acts would enable the State to give one owner the different treatment from another equally situated, the owner who is discriminated against, can claim the protection of Article 14 of the Constitution. Thus a party, who is the owner of the land under the Town Improvement Trust or under the Land Acquisition Act has to be treated equally. If this principle as upheld by the Constitution Bench in the case of **Nagpur Improvement Trust and another v. Vithal Rao and others (supra)** is applied, it has to be held that the petitioner was entitled to benefits under Section 23(1-A) of the Land Acquisition Act as the learned Tribunal passed the award which was modified by the High Court in writ petition after enforcement of the amending Act and therefore, the authority relied upon by the learned District Judge was not applicable to the facts of the present case. The order passed by the learned District Judge, therefore, cannot be sustained.

This revision petition is allowed, the order passed by the District Judge is set aside and that of learned executing Court is restored.

[**Vinod K.Sharma**]

Judge

20.09.2007

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